

Present: Chairperson Schafer; Members: Fahlen, Farris, Francis, Mercer, Needham and Verdi-Hus

Absent: Brady, Tillman

Also Present: Building Official, Byrwa  
Council member, Peddie

Chairperson Schafer presided and called the meeting to order at 7:33 p.m. in the Village municipal building at 18500 W. Thirteen Mile Road.

**APPROVE MINUTES OF A REGULAR ZONING BOARD OF APPEALS MEETING HELD ON MARCH 12, 2007**

Motion by Fahlen, second by Francis, that the minutes of a regular meeting of the Zoning Board of Appeals meeting held on March 12, 2007 be approved as submitted.

Motion passed (7 – 0).

**CASE NO. 1179**

**Petitioner & Property:** Philip and Loma Schmitt  
18103 Riverside Drive  
Lots 1984, 1985, part of 1983 of West Beverly Subdivision  
TH24-02-280-047

**Petition:** Petitioners request permission to erect a 6 ft. high privacy fence that will not be 10 ft. from the property line and is more than 25% of the lot line portion of the rear yard.

This case was previously distributed for the 11/13/06 meeting but was tabled at the request of the petitioners prior to the hearing.

Byrwa indicated that the house in question was built in 1963. He described the request for variance and displayed photographs of the property and surrounding area. The house is located at the corner of Beverly Road and Riverside Drive where it comes together; Southfield Road is about 30 yards from this property. Medical Village is located across Beverly Road, which is four lanes at this point. The petitioners are requesting to construct a 6 ft. high privacy fence in their back yard along Beverly Road and along the rear property line. The proposed fence would be confined to the rear yard.

Byrwa mentioned that Medical Village was granted a variance several years ago to increase the height of parking lot lighting to 18 ft. in lieu of the maximum 14 ft. height. A sign permit application was submitted for a spa operation at Medical Village in close proximity to the applicant's property. Byrwa displayed various views of the petitioners' property and surrounding area. He noted that the vegetation does not provide adequate screening.

The petitioner is asking for a variance from Zoning Ordinance Section 22.08.150 allowing enclosure of up to three sides of rear and side yards. The ordinance states that privacy screens are

allowed in rear and side yards to enclose an area of up to three sides only that are located a minimum of 10 feet from any lot line and with a total horizontal length that does not exceed 25% of the lot line portion of the rear yard. Byrwa noted that locating the privacy screen 10' from the lot line would reduce the size of the petitioner's back yard.

Petitioner Phil Schmitt was present with his wife Loma. The petitioners are requesting a 6 ft. high privacy fence in their back yard along Beverly Road. The property backs commercial property (Medical Village and the Swim Club). It is in direct view of Southfield Road. There is a lack of privacy from pedestrians and invasive lighting from auto headlights from Medical Village and Beverly Road as well as the overhead lighting coming from the office complex.

The adjacent neighbor Pete Delano of 18115 Riverside indicated his support for the variance requested. He mentioned that the utility company cleared off quite a bit of brush that provided some privacy for the Schmitt's lot and screening from headlights.

Schmitt related that he is asking for a privacy fence that will provide a screen from commercial property that generates automobile headlights and parking lot lights. He mentioned that there is a spa going in at Medical Village, which is likely to increase traffic. Schmitt stated that his property is unique in that it is the focal point of Riverside Drive and Beverly Road (both collector roads in the Village), and Southfield Road (a major thoroughfare) where they all come together. There is the only house on Beverly Road that is located adjacent to commercial property.

Schmitt proposes to erect a 6 foot cedar, lattice-topped screen. He distributed a photograph of what the proposed fence would look like, noting that the lattice top gives the appearance of being lower in height. Schmitt related that consideration has been given to planting a greenbelt, but there are problems in that the existing deciduous hedge only screens headlights and traffic in the summer. Planting arborvitae trees would not provide screening unless they were planted two rows deep, and there is not enough space. Additionally, there are 60' spruce trees in the neighbor's back yard that generate too much shade for growing shrubbery in his back yard.

Schmitt related that Detroit Edison buried a cable last fall and removed a section of hedge that had provided some screening. He is asking for a 6 ft. high privacy screen to shield his property from the commercial district.

Board members voiced questions and comments on a number of issues including: existing conditions with respect to the petitioner's property and the Medical Village complex, specific dimensions and placement of the proposed fence, whether privacy could be achieved without installing fencing along the north property line, how to calculate the openness of the proposed fence, restrictions on erecting a fence in the utility easement, and the length of the fence segment coming toward the house. In response to an inquiry, Byrwa stated that the ordinance would only allow the property owner to construct a 4 ft. high fence that is 35% open.

Fahlen provided background information that resulted in an ordinance amendment that allows 6 ft. high fences to be erected along the rear yards of properties that abut major roads. He thought that this request for variance was a legitimate request based on a hardship involving traffic headlights from the Medical Village complex and removal by Detroit Edison of shrubbery that screened some of those lights.

Mercer commented that he understood the need for a variance along Beverly Road but did not think there was a privacy issue that would justify the fence extending along the north section of the lot. He suggested that there was no difference between the applicant's property and any other homeowner in terms of the northerly lot line.

Needham questioned whether the petitioner would consider amending his petition to remove a section of fence along his north property line and placing a maximum length on the section of fence that extends from the Beverly Road lot line toward the house.

Schmitt responded that a 24' length of fencing from Beverly Road towards the house would be more effective than 16' to screen the patio area because shrubbery will not grow in that shaded portion of the lot.

Kathleen Berwick of 31381 Kennoway Court suggested that the petitioner plant evergreens in lieu of constructing a fence. She expressed concern with the safety of children walking along Beverly Road with the fence so close to the sidewalk.

Schmitt responded that planting arborvitae along Beverly Road would not block enough light unless it was a double row, and the corner of the back yard is not deep enough to support a double row of evergreens. Additionally, there are large, established deciduous trees in the Beverly Road easement that shade any new growth. The abutting neighbor's 60' tall spruce trees shade his rear yard and prevent growth of shrubbery. In answer to an inquiry, Schmitt stated that car headlights, parking lot lights and business lights are a problem. He stated that the section of fence along the lot line abutting the property to the rear is requested for privacy reasons and the fact that evergreens will not grow in that heavily shaded area.

**Decision:** Motion by Fahlen, second by Needham, to grant a variance to erect a 6 ft. high privacy fence based on the hardship involving auto headlights and parking lot lights from Medical Village and due to the removal by Detroit Edison of shrubbery that screened some of that light. The variance is approved with the following conditions: The fence along Beverly Road will be located one foot in from the sidewalk, 70' from the corner, and 24' from Beverly Road extending towards the house. The petitioner has amended his petition to remove the northerly section of fence extending between his lot line and his neighbor's property (Lot 1983).

Roll Call Vote:

Francis - yes  
Mercer - yes  
Needham - yes  
Schafer - no  
Verdi-Hus - yes  
Fahlen - yes  
Farris - yes

Motion passed (6 – 1).

**CASE NO. 1184**

**Petitioner and Property:** Josh and Jodie Forquer  
32240 Arlington Dr.  
Lot 500 and half of Lot 501 of Greenfield Beverly subdivision  
TH24-01-281-003

**Petition:** Petitioner requests a rear yard deviation from the minimum requirement of 40 ft. to 35 ft. for an addition.

Byrwa stated that the house was built in 1949. The petition is requesting a variance from the 40 ft. rear yard setback requirement to 35 ft. in order to construct an addition onto the back of the house. Byrwa displayed photographs of the property and the proposed location of the addition.

The petitioners Josh and Jodi Forquer were present. Josh Forquer displayed floor plans of the house and proposed addition. He indicated that an architect was hired to explore various options for providing more living space; this was the only alternative that would work with the existing interior layout. It is necessary to extend the structure into the rear yard in order to provide adequate space.

Forquer stated that their neighbors were contacted, and they are all in support of the variance requested. He added that there are other lots in the area that have less than the required setbacks.

In answer to an inquiry, Byrwa stated that the petitioner's lot is nonconforming in terms of the existing side yard setbacks.

Schafer related that the Village received an email dated April 6, 2007 from Nancy Stermer of 32260 Arlington encouraging the Zoning Board to approve the request for variance on the basis that it will enhance the neighborhood.

**Decision:** Motion by Needham, second by Verdi-Hus, to grant the variance as requested due to the practical difficulty of locating an expansion in any other location on the lot.

Roll Call Vote:  
Motion passed (7 – 0).

**CASE NO. 1185**

**Petitioner/Property:** Johnny Karmo representing Market Fresh  
31201 Southfield Road  
Acreage, TH-24-02-480-013

**Petition:** Petitioner requests permission to display the following:

1. Bedding plants from 4-1-07 through 9-30-07
2. Pumpkins from 10-1-07 through 10-31-07
3. Christmas trees from 11-01-07 through 12-31-07
4. Porch displays from 3-1-07 through 10-31-07

Byrwa displayed photographs of the exterior of the Market Fresh store at the corner of Thirteen Mile and Southfield Roads. He noted that there have been improvements made to the inside and outside of the building since Market Fresh took over the property. Permanent awnings have been installed on the south side of the building, and the size of the sidewalk has been increased. Outdoor items will be displayed up against the building; no parking spaces will be eliminated.

Nick Karmo, store manager for Market Fresh, was present requesting a variance from the ordinance in order to display seasonal items outside. He explained that the products to be displayed outside are not able to be sold inside: wreaths, mulch, flowers, bedding plants, hay, pumpkins, etc. Sales would take place on the inside of the store. Questions from Board members regarding the sale of these products were addressed by Karmo.

Schafer mentioned that this is a use variance and requires six affirmative votes for approval.

**Decision:** Motion by Mercer, second by Francis, to approve the variance to allow outdoor displays at Market Fresh on the dates requested for the reason that the items being sold are the type of merchandise that needs to be displayed outside.

Roll Call Vote:  
Motion passed (7 – 0).

**CASE NO. 1186**

**Petitioner & Property:** Starbucks  
31213 Southfield Road  
Acreage, TH24-02-480-013

**Petition:** Petitioner requests permission for three outdoor tables and six chairs on the east porch in front of Starbucks until November 1, 2007.

Byrwa displayed photographs of the area outside of the Starbucks store on Southfield Road where tables and chairs would be located. There were no complaints or incident reports received last year with respect to outdoor seating.

Fahlen asked administration to inquire of the Public Safety Department if it would be wise to add another section or two of railing in front of the door to keep people from inadvertently walking out of Starbucks into the roadway without looking for traffic.

Kate Davidson, supervisor representing this Starbucks store, clarified that the request is to place three tables and six chairs outside of the store for use by patrons who want to eat or drink coffee outside. This variance is being requested for the reason that, compared to other locations, this store has very limited indoor seating.

Mercer questioned how this request falls under the jurisdiction of the Zoning Board of Appeals if there are no products displayed or offered for sale outside. Byrwa stated that the use of outside tables in front of the Starbucks store requires a variance from the Zoning Ordinance because all business activity in a business zoned district has to be conducted within that business. Schafer added that this question was addressed previously; it was determined to be arguable whether the purchasing of product and consumption of that product on site requires Starbucks to come in for a

request for variance. However, the petitioner has not brought an ordinance interpretation request before the ZBA.

Schafer commented that this is a use variance and must be approved by six members of the Board.

**Decision:** Motion by Francis, second by Needham, to approve the request from Starbucks to place three outdoor tables and six chairs on the east porch in front of the store until November 1, 2007 for the reason that they are unable to conduct their business inside.

Roll Call Vote:

Schafer	- yes
Verdi-Hus	- yes
Fahlen	- yes
Farris	- yes
Francis	- yes
Mercer	- abstain
Needham	- yes

Motion passed (6 yes - 0 no - 1 abstention).

It was questioned whether Mr. Mercer was able to abstain without a vote of the Board. The point was made that a specific number of affirmative votes is required for approval of variances, and an abstention is equivalent to a “no” vote. Village legal counsel will be asked for his opinion on this matter.

**PUBLIC COMMENTS**

None

**ZONING BOARD COMMENTS**

None

**BUILDING OFFICIAL COMMENTS**

Byrwa provided background on a Planning Board neighborhood study that has resulted in proposing text amendments to the Schedule of Regulations in terms of lot sizes and setbacks and a change in the Zoning Map with the intent of reducing the amount of nonconformity in the northeast section of the Village. The Planning Board has proposed making changes to the R-2, R-2A and R-3 districts that would result in reducing the required side yard setback, the required lot width (except for the R-2 district) and reducing the minimum lot area requirements for those three districts. The zoning changes would create conforming lots out of many nonconforming lots in the area.

Byrwa advised Zoning Board members to attend the Planning Board public hearing on this proposed ordinance amendment on Wednesday, April 25, 2007. There will be a second public hearing at the Council level. The ordinance is posted on the Village of Beverly Hills web site.

Mercer expressed opposition to the proposed ordinance for the reason that he did not think that the zoning changes in terms of reducing setbacks and lot size requirements were equitably distributed

among R-2 lots in the area. He lives in an R-2 district and was concerned about the impact on his property values. Byrwa suggested Mercer attend the Planning Board public hearing and voice his views.

Byrwa informed that Board that there have been two cases filed to date for the May ZBA meeting.

Motion by Fahlen, second by Needham, to adjourn the meeting at 8:43 p.m.

Motion passed (7 – 0).

**Todd Schafer, Chairperson**  
**Zoning Board of Appeals**

**Ellen E. Marshall**  
**Village Clerk**

**Susan Bernard**  
**Recording Secretary**